Petition

Office Court, U.S.
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81-1606

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

JAMES M. REGAN,

Petitioner,

vs.

MARTIN J. CONROY, CHIEF OF POLICE OF THE VILLAGE OF SCHAUMBURG,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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QUESTION PRESENTED FOR REVIEW

Does a press release which stigmatizes a person's reputation resulting in a tangible loss require a hearing prior to or at the issuance of the press release pursuant to a liberty interest concept under the Fifth and Fourteenth Amendments of the United States Constitution?

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Petitioner, JAMES M. REGAN, respectfully prays a Writ of Certiorari issue to review the judgment entered on November 30, 1981, by the Supreme Court of Illinois, in its cause number 55590.

OPINIONS BELOW

On August 13, 1980, the Circuit Court of Cook County, Illinois, granted respondent's Motion to Dismiss Petitioner's Fourth Amended Complaint, Count I, with

prejudice by holding that a press release stigmatizing a person's reputation resulting in a tangible loss does not require a hearing prior to or at the issuance of the press release in conjunction with a liberty interest concept.

On August 5, 1981, the Illinois Appellate Court, First District, affirmed the judgment of the Circuit Court, which opinion is reprinted as Appendix A.

On November 30, 1981, the Illinois Supreme Court denied a Petition for Leave to Appeal, which denial is reprinted herein as Appendix B.

JURISDICTION

1. The federal question was raised by the petitioner in his Fourth Amended Complaint, Count I, filed in the Circuit Court of Cook County, Illinois, to the effect that a press release stigmatizing his reputation resulting in a tangible loss required a hearing either prior to or at the issuance of such release pursuant to the liberty interest concept under the Fifth and Fourteenth Amendments of the United States Constitution.

2. The Petition for Certiorari was filed within 90 days after the entry of the denial of the Petition for Leave to Appeal by the Illinois Supreme Court on November 30, 1981.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV:

"Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Prior to March 12, 1976, the petitioner was a police patrolman for the Village of Schaumburg, Illinois.

On March 12, 1976, the Chief of Police of the Village of Schaumburg, Illinois, issued the following press release to "The Herald" newspaper:

> "The chief said the arrest of Regan climaxes a two-month investigation by police officials during which the policeman came under suspicion for the theft and for trading the items with full knowledge they were stolen."

That subsequently the petitioner was discharged by the Board of Fire and Police Commissioners of the Village of Schaumburg, Illinois, after a hearing by the board and was arrested afterwards for the alleged crime to which Chief Martin J. Conroy had referred in his remarks to the newspaper.

On August 25, 1976, the petitioner was found not guilty in a criminal proceeding for the alleged thefts.

REASONS FOR GRANTING THE WRIT

THAT THE APPELLATE COURT DECISION, IN THIS INSTANCE, IS CONTRARY TO LAW IN THAT A PRESS RELEASE STIGMATIZING A PERSON'S REPUTATION RESULTING IN A TANGIBLE LOSS REQUIRES A HEARING PRIOR TO OR AT THE ISSUANCE OF THE PRESS RELEASE.

To determine the existence of a "liberty interest" violation in terms of the Fifth and Fourteenth Amendments of the United States Constitution the following pertinent language from *Stanley v. The Big Eight Conference, et al.*, 463 F.Supp. 920 (1978) is cited:

> "*Paul v. Davis, supra,* does not stand for the proposition that an individual has no liberty interest in his professional reputation as it affects his future employment opportunities. Rather, that important decision established the outer limits of the protective shield of federal rights by holding that reputation standing alone and isolated from 'some more tangible interest' is not a right entitled to constitutional and statutory redress if that reputation is injured by the state. Some of these 'more tangible interests' have been determined by the Court to be: discharging of plaintiff from governmental employment, *Arnett v. Kennedy,* 416 U.S. 134, 94 S.Ct. 1633, 40 L.Ed.2d 15 (1974); barring the plaintiff from future government employment, *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 123, 71 S.Ct. 624, 95 L.Ed. 817 (1951); depriving an individual of a right to purchase alcoholic beverages, *Wisconsin v. Constantineau,* 400 U.S. 433, 91 S.Ct. 407, 27 L.Ed.2d 515 (1971), and suspension of a student from a public school, *Goss v. Lopez,* 419 U.S. 565, 95 S.Ct. 792, 42 L.Ed.2d 725 (1975). Herein, the 'more tangible interest' is Stanley's employment with OSU which had recently been terminated due at

> least in part to the allegations contained in the report, and his professional reputation which will determine his future employment opportunities."

It is the contention of the petitioner that he has alleged in Count I of his Fourth Amended Complaint a violation of a liberty interest when his good name, reputation, honesty and integrity were impaired by the publication of Martin J. Conroy's remarks that the petitioner came under suspicion of theft *with full knowledge that the traded tems were stolen.*

Furthermore the petitioner contends that he lost a tangible interest, his employment from the Village of Schaumburg, Illinois, Police Department, because of the stigmatization of his good name as contained in that newspaper article.

Although the petitioner had been discharged pursuant to a hearing before a Board of Fire and Police Commissioners of the Village of Schaumburg, Illinois, thereby conforming with the requirements of due process relating to "liberty interest" considerations via *Bishop v. Wood*, 426 U.S. 341 (1976), *Arnett v. Kennedy*, 416 U.S. 134, 94 S.Ct. 1633, 40 L.Ed.2d 15 (1974), *Owen v. City of Independence, Missouri*, 100 S.Ct. 1398 (1980), nevertheless the petitioner maintains that the hearing process should have been invoked before or at the time of the issuance of the press release, not at the Fire and Police Commission level, since that press release of wide circulation had stigmatized his reputation which required rebuttal at that point of time in order to insure a fair hearing before a Board of Fire and Police Commissioners of the Village of Schaumburg, Illinois.

As previously stated herein, in *Bishop*, *Arnett*, and *Owen*, the Court concerned itself with liberty interest

violations that dealt with discharges without hearing during the course of employment.

However, in *Larry v. Lawler*, 604 F.2d 954 (1978), the Court held that an applicant applying for a federal position through the federal Civil Service Commission had been denied a liberty interest when an investigative background had contained stigmatizing material, alcoholism, which barred him from all federal employment for three years.

The significance of the *Larry* decision is that it is very analogous to the petitioner herein in that Larry had been stigmatized before applying for employment while the petitioner had been stigmatized prior to appearing before a Board of Fire and Police Commissioners convened for a hearing to determine if his employment should be continued.

Because the petitioner was unable to dispute the press release prior to its publication, or in the alternative, was not provided with the press release in advance to dispute it via a hearing, he contends his liberty interest was violated and that the subsequent finding of not guilty of those alleged criminal violations did not mitigate the initial impression created by the press release that in fact he committed an alleged crime for which he lost his employment.

CONCLUSION

The writ should issue to the Supreme Court of Illinois in that it should have reversed the Illinois Appellate Court which sustained the Cook County Circuit Court's decision that a liberty interest violation did not occur when Police Chief Martin Conroy of the Village of Schaumburg, Illinois, police department issued a press release stigmatizing the petitioner's reputation resulting in a tangible loss; namely, his employment with the Schaumburg Police Department.

Respectfully submitted,

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Appendix

APPENDIX A

Opinion of the Appellate Court of Illinois
First District—Filed August 5, 1981

No. 80-2392

JAMES M. REGAN,

Plaintiff-Appellant,

v.

MARTIN J. CONROY, Chief of Police of the Village of Schaumburg,

Defendant-Appellee.

Appeal from the Circuit Court of Cook County.
Honorable **Arthur A. Sullivan**, *Presiding.*

MR. JUSTICE MCNAMARA delivered the opinion of the court:

Plaintiff, James M. Regan, appeals from an order of the trial court dismissing with prejudice count I of the fourth amended complaint. The complaint seeking damages charged that certain quoted remarks of defendant, Martin J. Conroy, contained in a newspaper article impaired plaintiff's good name, reputation, honesty and integrity and that he was deprived of his constitutional "liberty interest" right to a name-clearing hearing before or at the time of the press release. Contained in the court's order of dismissal was the finding that there was no just reason to delay the enforcement or appeal of its order.

On March 12, 1976, an article appeared in a newspaper attributing certain remarks to defendant, Chief of Police of the Village of Schaumburg, about plaintiff, then a Schaumburg policeman. The offensive language in the article is as follows:

> "The chief said the arrest of Regan climaxes a two-month investigation by police officials during which the policeman came under suspicion for theft and for trading the items with full knowledge they were stolen."

Subsequent to publication of the article, the Schaumburg Fire and Police Commission conducted a hearing and thereafter discharged plaintiff as a police officer. Also subsequent to the article, plaintiff was found not guilty of theft in criminal proceedings.

The sole issue on appeal is whether a name-clearing hearing must be conducted prior to the issuance of the stigmatizing statement.

In a case where the dismissal of a public employee is based on a charge that might seriously damage his standing and associations in the community, due process would mandate an opportunity to refute the charge, and a hearing would be required before he could be deprived of the element of his "liberty" protected by the fifth amendment prohibition against deprivation without due process. (*Board of Regents v. Roth* (1972), 408 U.S. 564.) Citing *Meyer v. Nebraska* (1923), 262 U.S. 390, the United States Supreme Court has described the liberty interest involved in a "subspecies of the right of the individual 'to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men.'" *Arnett v. Kennedy* (1974), 416 U.S. 134, 157.

In the present case, plaintiff was afforded a hearing in compliance with due process, and he does not challenge

the validity or procedures of that hearing. Thus plaintiff received the required opportunity to clear his name. The mere fact that the opportunity for name-clearing occurred after the stigmatizing statement in no way taints the constitutional adequacy of the hearing. The language of the Supreme Court in *Arnett v. Kennedy* is instructive on the disposition of the present issue. At p. 157, the court stated:

> "But that liberty is not offended by dismissal from employment itself, but instead by dismissal based upon an unsupported charge which could wrongfully injure the reputation of an employee. Since the purpose of the hearing in such a case is to provide the person "an opportunity to clear his name," a hearing afforded by administrative appeal procedures after the actual dismissal is a sufficient compliance with the requirements of the Due Process Clause."

A name-clearing hearing conducted after the issuance of the stigmatizing statement is constitutionally adequate, and the trial court properly dismissed count I of the amended complaint.

For the reasons stated, the judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

RIZZI, P.J., and WHITE, J., concur.

APPENDIX B

ILLINOIS SUPREME COURT
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November 30, 1981

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No. 55590 — James M. Regan, petitioner, vs. Martin J. Conroy, Chief of Police of the Village of Schaumburg, respondent. Leave to appeal, Appellate Court, First District.

You are hereby notified that the Supreme Court today denied the petition for leave in the above entitled cause.

Very truly yours,

/s/ CLELL L. WOODS
Clerk of the Supreme Court